

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7308

BILL NUMBER: SB 482

NOTE PREPARED: Jan 18, 2015

BILL AMENDED:

SUBJECT: Performance and Payment Bonds.

FIRST AUTHOR: Sen. Eckerty

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill requires that public-private agreements must contain performance bond and payment bond requirements.

Effective Date: July 1, 2015.

Explanation of State Expenditures: *Indiana Department of Administration (IDOA):* The bill requires that IDOA (as well as any other state or local contracting agency) is to require performance and payment bonds in public-private agreements for public works. Public works projects include building construction and maintenance projects. There would be no material impact on IDOA, as these requirements are already consistent with current public works requirements.

Indiana Finance Authority (IFA): For IFA public-private highway project agreements, performance bonds are currently permissible, but not mandatory. The use of performance bonds are included in the negotiation of contracts between IFA and the private partner, regardless of whether federal funds are used for the project.

Mandating performance and payment bonds in public-private agreements may increase the cost of doing these agreements for IFA. Typically, surety bond companies charge between 1% and 15% of the total bond amount to the bond applicant. The bill requires that the performance bonds be for an amount that covers 100% of the project cost.

Additional Information: There are typically three types of surety bonds used in highway construction: the bid guarantee, the performance bond, and the payment bond. The bid guarantee provides assurance that the

bid has been submitted in good faith and that the bidder intends to enter into the contract at the price bid and will also provide the required performance and payment bonds. The performance bond protects the contracting agency from financial loss should the contractor fail to perform in accordance with the contract's terms and conditions. The payment bond guarantees that the contractor will pay subcontractors, laborers, and material suppliers associated with the project, but this bond type is not addressed in the bill.

When contracting agencies require bid guarantees and performance bonds, this is one method of contractor prequalification, as the surety companies who issue the bonds have already performed their own due diligence in the issuance of the required bonds. Several studies suggest, however, that this prequalification method (that relies on bonding as a guarantee of work) is not necessarily the best indicator of whether a contractor will perform well on a particular construction project.

In addition to state law, bonding on certain construction projects is required by a federal law (the Miller Act). The Miller Act requires that all federally funded construction projects in excess of \$100,000 (including transportation projects) require performance and payment bonds. The Miller Act only applies to the contractor chosen to complete the project and not to all bidders on the project.

Explanation of State Revenues:

Explanation of Local Expenditures: Local political subdivisions who enter into a public-private agreement for public works must use performance and payment bonds. The bill may increase the costs of these projects if a political subdivision is not requiring these bonds currently. The amount of impact to local units is indeterminable at this time.

Explanation of Local Revenues:

State Agencies Affected: IFA, INDOT.

Local Agencies Affected: Political subdivisions.

Information Sources: Tim Grogg, IDOA, tigrogg@idoa.in.gov; IDOA Website, <http://www.in.gov/idoa/2353.htm>; Andrew Kienle, IFA, akienle@ifa.in.gov; INDOT permits webpage, www.in.gov/indot/2501.htm; Associated General Contractors of America Miller Act webpage, www.agc.org/cs/advocacy/legislative_activity_miller_act; Michin Jr., R.E. and Smith, G.R. *Quality-Based Performance Rating of Contractors Prequalification and Bidding Purposes*, http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_w38.pdf. Transportation Research Board. Accessed 12/17/2014; Gransberg, D. And Reimber, C. NCHRP Synthesis 390: Performance-Based Contractor Prequalification, http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_390.pdf. Transportation Research Board. Accessed 12/17/2014

Fiscal Analyst: Stephanie Wells, 232-9866.